

SECTION 511

Overview

Section 511 is a new requirement for employers/ agencies who hold a 14(c) certificate, under the Fair Labor Standards Act (FLSA) (29 U.S.C. 214(c)). The purpose of Section 511 is to ensure that individuals with disabilities have access to information and services that will enable them to achieve competitive, integrated employment. In North Dakota, this applies to Community Rehab Providers and the Life Skills and Transition Center.

I. Requirements of Section 511

Employers/agencies who hold a 14 (c) certificate must comply with the new requirements of the law before continuing to employ individuals with disabilities of any age or hiring a youth (24 or younger) with disabilities at subminimum wage.

Youth with disabilities must complete several required activities that promote the consideration of competitive integrated employment before they can enter employment that pays less than federal minimum wage.

Individuals currently in subminimum wage employment must be provided career counseling along with informational and referral services throughout the duration of their employment to ensure knowledge of employment options and supports in their community.

II. Subminimum Wage Limitations for Youth

Under the Workforce Innovation and Opportunities Act (WIOA) Section 511, employers are prohibited from compensating any individual with a disability who is 24 years of age or younger at subminimum wage, unless the individual has documentation from DVR of the following:

1. Pre-employment transition services through Vocational Rehabilitation or transition services under the Individuals with Disabilities Education Act.
2. The individual was determined:
 - a. Ineligible for vocational rehabilitation services. See Trial Work Policy.
 - b. Eligible for vocational rehabilitation services, had an approved Individualized Plan for Employment, and the individual was unable to achieve an employment outcome in competitive integrated employment and the case is closed disability too severe and unable to benefit.

3. Career counseling, along with information and referral to federal and state programs to help the individual explore competitive integrated employment. See appendix A.

The VR Counselor will complete the SFN 1093 (Youth Seeking Subminimum Wage Employment) as soon as possible, but not later than 45 days upon completion of the required activities. The original SFN 1093 will be placed in the individual's VR case and a copy will be provided to the individual and/or guardian. See Appendix B "Section 511 Subminimum Wage Documentation for Individuals 24 and Younger".

The employer must obtain, review, and verify the individual has completed the three required activities before the individual begins employment at subminimum wage.

Refusal of the youth to participate in the required activities:

If an individual and/or guardian refuse to participate in required activities, the VR Counselor must document this refusal on SFN 1093 (Youth Seeking Subminimum Wage Employment). The documentation of refusal must be provided to the individual and/or guardian within 10 days, and a copy placed in the individual's VR file.

Note: If an individual refuses to participate in the required activities, he or she cannot be employed in subminimum wage employment.

III. Currently Working in Subminimum Wage Employment

Employers/agencies will no longer be able to employ individuals at subminimum wage unless:

1. They have been provided Career Counseling by VR.
2. Employers are only required to provide information to their employees regarding where the employee can participate in self-advocacy, self-determination and peer-mentoring training. Employers should not provide the training.

Note: Employers with less than 15 employees may refer their employees to DVR for self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area.

Any individual hired at subminimum wage after July 22, 2016 must receive Career Counseling once every six months the first year of employment and annually thereafter. All individuals employed at subminimum wage prior to July 22, 2016 require Career Counseling annually.

In order for an individual with a disability to continue working in subminimum wage employment, VR must provide the individual with counseling and guidance that facilitates informed choice and decision-making by the individual. Counseling and guidance can be provided at the worksite, individually, or in a group setting.

Documentation of career counseling will be completed on SFN 685 (Section 511 Subminimum Wage Review).

- The SFN 685 and a letter regarding the results of career counseling will be provided to the employer/agency and the individual and/or guardian within 45 days of the career counseling. Both the employer and VR will maintain a copy of the SFN 685 and letter.
- VR will send a letter to the individual and/or guardian regarding the results of the interview.
- Individuals who are their own guardian and have expressed interest in DVR services will be contacted by the regional VR office.
- Individuals who have a guardian and have expressed interest in VR services will request a VR staff attend their next scheduled team meeting. It is the responsibility of the employer/agency, guardian, or individual to schedule this meeting.

Note: A VR case which is opened as the result of a 511 interview should be documented in AWARE ND with a Referral Source of Subminimum Wage (511 Interview).

Refusal of Career Counseling

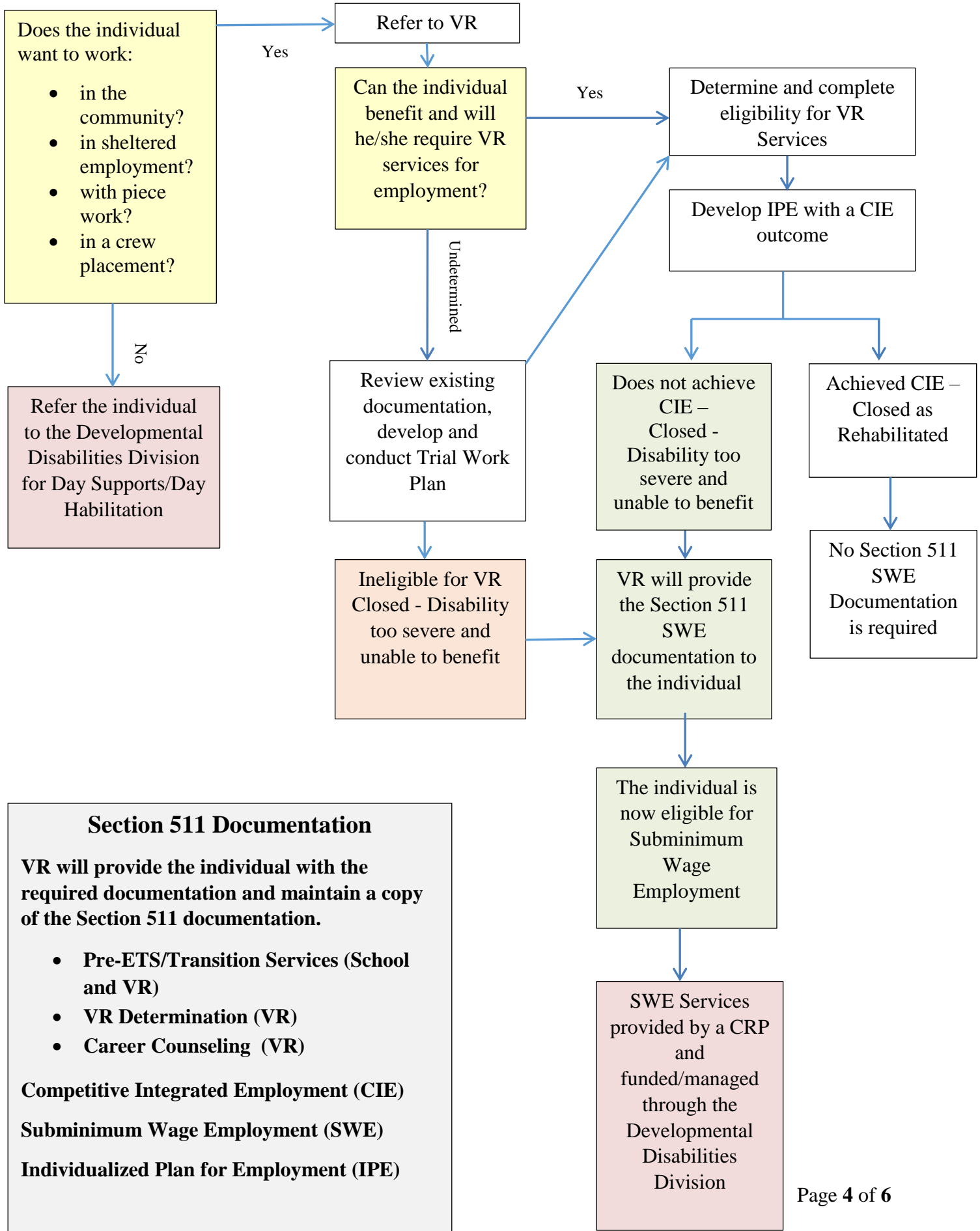
If an individual and/or guardian refuse to participate in career counseling, the VR program must document this refusal on SFN 686 (Refusal of Career Counseling Services). Documentation of refusal must be provided to the individual within 10 days of the refusal.

Note: If an individual refuses career counseling, he or she **cannot enter or continue working in** subminimum wage employment.

IV. Career Counseling Requirements for New Hires

Individuals newly hired by an employer/agency, regardless of age, must receive career counseling every six months the first year of employment, and annually thereafter. VR has 30 days to conduct the initial interview once they are known to VR.

Section 511 (Subminimum Wage Employment) – Individuals 24 and Younger



Section 511 Subminimum Wage Documentation for Individuals 24 and Younger

Documentation	Entity Responsible	Deadline
<p>Individuals enrolled in school will require documentation of completion of Transition Services under IDEA</p> <ul style="list-style-type: none"> Documentation will be maintained by the Local Educational Agency and the VR Regional Office, in the VR case file 	Local Educational Agency	Documentation is transmitted to VR within 30 calendar days of completion of Transition Services (60 days under extenuating circumstances)
<p>Documentation of all three of the required Section 511 activities for youth prior to entering subminimum wage employment (Pre-Employment Transition Services, Outcome of VR Services and Career Counseling).</p> <ul style="list-style-type: none"> Documentation will be maintained by the VR Regional Office, in the VR case file) 	VR Agency	Documentation provided to the youth within 45 calendar days of completion of all three of the required activities (90 days under extenuating circumstances)
<p>Documentation of the youth refusal to participate in Transition Services under IDEA</p> <ul style="list-style-type: none"> Documentation will be maintained by the Local Educational Agency and the VR Regional Office, in the VR case file 	Local Educational Agency	Transmitted to VR within 5 calendar days of refusal
<p>Documentation of the youth refusal to participate in all three of the required Section 511 activities for youth prior to entering subminimum wage employment (Pre-Employment Transition Services, Outcome of VR Services and Career Counseling).</p> <ul style="list-style-type: none"> Documentation will be maintained by the VR Regional Office, in the VR case file 	VR Agency	Documentation of the refusal is provided to youth within 10 calendar days

Information and Referrals to Other Programs

What programs or agencies are included in the phrase, “Federal and State programs and other resources in the individual’s geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment”?

- I. Other core partner programs in the Workforce Development System in the State
 - A. Title I adult, dislocated worker and youth programs – One-Stop Career Centers, now known as American Job Centers
 - B. Title II programs – Adult Education and Literacy
 - C. Title III programs – Wagner-Peyser (often indistinguishable from Title I services) and Disability Employment Initiative (DEI)
- II. Community rehab programs that offer employment services
- III. Ticket to Work Employment Networks
- IV. Other local agencies in a service area, including some faith-based organizations

When engaging in career counseling with individuals with disabilities, rehabilitation professionals should ensure that they are aware of cultural differences and that they discuss the available options, such as supported or customized employment. A discussion of the need for assistive technology or reasonable accommodation on the job is important to maximize the potential for success. It is helpful to assess the individual’s support system and to provide information on available resources for the individual.